

¹ See *In Re: Asbestos Products Liability Litigation* (No. VI), 873 F.3d 232, (2017).

Supreme Court now has scheduled argument in the case for October 10, 2018.

ARGUMENT

If the Supreme Court reverses the Third Circuit and concludes that an equipment manufacturer may not be held liable for injuries allegedly caused by products it neither manufactured nor supplied, then Buffalo would be entitled to summary judgment on the record in this case under the so-called “bare metal” rule. If, conversely, the Supreme Court affirms the Third Circuit in whole or in part, Buffalo’s entitlement to summary judgment on that issue could be impacted depending on the specifics and parameters of the Court’s decision.²

Not only the status of Buffalo’s summary judgment arguments, but also the parties’ broader case preparation will be directly and significantly impacted by the Supreme Court’s decision. For example, the parties currently are in the process of retaining and disclosing experts. The topics the parties ask those experts to address will be directly impacted by the outcome of the Supreme Court’s decision. Among many other issues, that decision will determine which products are potential sources of liability, and therefore which products must be evaluated in terms of exposure or causation.

“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936). A court may hold one lawsuit in abeyance to abide the outcome of another which may substantially affect it or be dispositive of the issues. *See American Life Ins. Co. v. Stewart*, 300 U.S. 203, 215 (1937). Further, a stay is appropriate pending the outcome of a potentially dispositive Supreme Court decision. *See, e.g., Stokes v. Rea/Page, Inc.*, 2016 WL 9711699 at *1 (E.D. Pa. Jan. 25, 2016) (granting stay pending potentially dispositive Supreme Court decision that may “affect the viability of the lawsuit” and define the “parameters” of rulings).

² Because Thomas Gorton never worked on a Buffalo pump itself, nor know if one contained asbestos, Buffalo believes it would be entitled to summary judgment in any event. There is no reason, though, for the parties to brief and the Court to consider Buffalo’s grounds for summary judgment serially.

Other federal courts have observed that the applicability of the “bare metal” rule is “an important dispositive issue” in cases such as this. *See McAfee v. 20th Century Glove Corp of Texas*, No. 5:13-cv-6856, Order (E.D. Pa. Feb. 16, 2018) (Exhibit A). As a result, proceeding with this case, rather staying it pending the Supreme Court’s decision in *DeVries*, would threaten both the Court and the parties with the prospect of unnecessary expense, duplication, waste, and uncertainty, with any further decisions, motions, trial, subject to challenges or appeals. In recognition of such concerns, several cases involving similar allegations of exposure to asbestos from third-parties’ products in connection with defendants’ equipment supplied for use on Navy ships have been stayed. *See Boesenhofer v. Aecom*, Civ. No. 2:17-01072-ER, Order (E.D. Pa. June 11, 2018), *Murphy v. Air & Liquid Systems Corp.*, Civ. No. 2:1-03898-ER, Order (E.D. Pa. August 15, 2018), *Fend v. Allen Bradley Company*, Civ. No. 2:17-01701-ER (E.D. Pa. September 28, 2018), (Exhibit B). Similarly, both *DeVries* and its companion case, *McAfee*, were stayed pending resolution of defendants’ petitions for certiorari. A similar stay would protect the Court and the parties here from the prospect of unnecessary burden, expense and waste of resources.

CONCLUSION

For the foregoing reasons, Buffalo respectfully requests that the Court stay proceedings in this case pending the Supreme Court’s decision in *DeVries*.

Respectfully submitted,

WILBRAHAM, LAWLER & BUBA

By: /s/ John A. Fitzpatrick
John A. Fitzpatrick, Esquire (I.D. No. 20087)
jsh@wlbdeflaw.com
1818 Market Street, Suite 3100
Philadelphia, PA 19103
215-972-2848
Attorneys for Defendant, Air & Liquid Systems Corporation,
as successor by merger to Buffalo Pumps, Inc.

Dated: September 28, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served a copy of the above and foregoing by electronic means via the CM/ECF to those registered with the CM/ECF.

/s/ John A. Fitzpatrick
John A. Fitzpatrick, Esquire

Date: September 28, 2018